

IN THE SUPREME COURT OF MISSOURI

Supreme Court No. SC84792

VINCE KARPIERZ, Reg. No. 1013181, and JAMES L. McMULLIN

Appellants

vs.

STATE OF MISSOURI, ex rel., JEREMIAH W. NIXON,
Attorney General, State of Missouri

Respondent

On Appeal from the Circuit Court of Cole County, Missouri

The Honorable Thomas J. Brown, III

APPELLANTS' REPLY BRIEF

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APPELLANTS' REPLY BRIEF

Pursuant to Mo. R. Civ. P. 84.03(g), Appellants submit this Reply Brief.

I. THE STATE OF MISSOURI'S ARGUMENT THAT McMULLIN DID NOT HAVE A PROPERTY INTEREST IN THE KCPD JUDGMENT PROCEEDS IS WITHOUT MERIT.

The primary focus of the State's argument on appeal is that the taking of McMullin's interest in the KCPD judgment proceeds was permissible because McMullin had no property interest whatsoever in the KCPD judgment proceeds, even though he had a contractual agreement with Karpierz which specifically entitled him to receive, on a contingent fee basis, fifty percent of the recovery obtained on behalf of Karpierz against the KCPD Defendants. The State argues, in essence, that McMullin had no property interest in the KCPD judgment proceeds, and therefore there was no unconstitutional taking under Art. I, § 26 of the Missouri Constitution.

The State's argument is entirely in error. First, the State ignores the fact that the U.S. Supreme Court has specifically stated that contract rights are indeed a form of property, and as such may only be taken for a public purpose if just compensation is paid. *United States Trust Co. of New York v. New Jersey*, 431 U.S. 1, 19 (1977). Thus, the State's argument that McMullin did not have a property interest in the KCPD judgment proceeds is entirely incorrect.

Second, the State also ignores the fact that the holding in *State ex. rel. Nixon v. Jewell*, 70 S.W.3d 465 (Mo. App. ED 2002), directly contradicts the State's entire argument. Indeed, *Jewell* is directly on point to the constitutional issue raised in this appeal. In *Jewell*, the State of Missouri attempted, through judicial action, to accomplish the exact same thing that they convinced the trial court to do in this case. The State of Missouri convinced the Circuit Court of St. Louis County to rule that a cemetery had been abandoned, and that a third party's lien should be entirely extinguished, with the result that ownership of the cemetery was transferred to St. Louis County, free and clear of any and all liens. As in this case, the State of Missouri prevailed in the trial court. But on appeal, the Missouri Court of Appeals held that the County's acquisition of the cemetery free and clear of the lien constituted an uncompensated taking of the lienholder's property, and therefore was unconstitutional. The essence of the Court of Appeal's holding is that "extinguishment of the lien by the trial court completely denied Jewell [the lienholder] all economic benefit of his lien." *Id.* at 467. *Jewell* is therefore directly on point to the issue presented in this case, and the State fails to cite any authority which contradicts the holding in *Jewell*.

II. MISSOURI COURTS HAVE CONSISTENTLY HELD THAT ATTORNEY'S FEE LIENS SHOULD BE LIBERALLY ENFORCED.

As we have demonstrated, McMullin clearly had a property interest in the KCPD judgment proceeds. Moreover, the State of Missouri's argument that attorney's liens in Missouri are not liberally enforced is without merit. To the contrary, it is the policy of Missouri courts to liberally enforce attorney's fee liens in order to give meaning to the obvious purpose of the attorney's fee lien statute, R.S.Mo. § 484.130, which is "to provide protection in fact for the attorney who has rendered services to a client." *Reed v. Reed*, 10 S.W.3d 173, 178 (Mo. App. WD 1999). As Judge Stith correctly observed in *Reed*, the attorney's fee lien also ensures "that a client, who otherwise may not have funds to pay for legal representation, will get the assistance of an attorney." *Id.* at 178, citing 27 A.L.R.5th at 777 and 7 Am.Jur.2d, Attorneys at Law § 332. As Judge Stith further stated, "[p]rotecting a fund from which an attorney will be compensated is thus said to broaden the accessibility of legal services. For these reasons, attorney's liens are considered to be 'remedial in nature [and] will be liberally construed,'" citing *Downs v. Hodge*, 413 S.W.2d 519, 523 (Mo. App. 1967).

The Missouri courts' policy of liberally enforcing attorney's fee liens further underscores the fact that the State of Missouri's usurpation of McMullin's share of the KCPD judgment proceeds was an unconstitutional taking of McMullin's

property rights, in contravention of Art I, § 26 of the Missouri Constitution, as well as the corresponding provisions of the Fifth Amendment of the United States Constitution. For this additional reason, the trial court erred in entering a judgment which permitted the State of Missouri to unlawfully usurp McMullin's attorney's fee interest in the KCPD judgment proceeds.

CONCLUSION

The State of Missouri's usurpation of McMullin's attorney's fee interest in the KCPD judgment proceeds constitutes an unconstitutional taking of McMullin's property without just compensation, and therefore violates Art. I, § 26 of the Missouri Constitution, and the takings clause of the Fifth Amendment of the United States Constitution. *State ex. rel. Nixon v. Jewell*, 70 S.W.3d 465 (Mo. App. ED 2002) is directly on point to the issue presented in this appeal. For these reasons, including those discussed in our opening brief, the judgment of the trial court should be reversed, and the case should be remanded to the trial court with directions to enter a judgment which fully compensates attorney McMullin for the entirety of his attorney's fee interest in the KCPD judgment proceeds.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that two true and correct copies of Appellants' Brief were sent via U.S. Mail, first class, postage pre-paid, this 11th day of March, 2003 to:

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George A. Barton

CERTIFICATE PURSUANT TO RULE 84.06(c)

George A. Barton, attorney for Appellants in this matter, hereby certifies that:

1. This Certificate contains the information required by Rule 55.03.
2. As shown below, Respondent's Brief complies with the limitations contained in Rule 84.06(b).
3. Appellant's reply brief contains 1,250 words and 162 lines of double-spaced type, as calculated by word-processing software.
4. Pursuant to Rule 84.06, a double-sided, high-density, IBM-PC compatible, 1.44 MB, 3½ inch size diskette has been scanned for viruses and is certified as being virus-free and is being filed herewith containing a copy of the foregoing brief in Microsoft Word format.

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